IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-06-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

HABEAS CORPUS PETITION NO.1303 OF 2006

S. Venugopal
S/o. Sadagopan .. Petitioner

Vs.

1. The Commissioner of Police,
   Greater Chennai,
   Egmore, Chennai 8.

2. Government of Tamil Nadu,
   rep. by its Secretary,
   Prohibition & Excise Department,
   Fort St. George,
   Chennai 600 009. .. Respondents

3. The Superintendent, Central Prison
Vellore

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Habeas Corpus to call for the records relating to the proceedings of the first respondent in Memo No.222/2006 dated 15.8.2006 and quash the same and consequently direct the respondents to produce the detenu Ramesh @ Vellai Ramesh, son of S. Venugopal, who has been now detained under Act 14/82 in Central Prison, Vellore, before this Court and set him at liberty.

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For Petitioner : Mr.R. Rajan

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

P.K. MISRA, J

The order of detention dated 15.8.2006 under Section 3 (1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) on the allegation that the detenu is a Goonda as contemplated under Section 2(f) of the said Act is in question. Such detention order was executed on 17.8.2006 and the grounds of detention were served on 18.8.2006.

2. From the grounds of detention it appears that against the detenu there are two adverse cases, namely, T-3 Korattur Police Station Cr.No.155/2004 under Sections 341 and 324 IPC and T-3 Korattur Police Station Cr.No.181/2004 under Section 399 IPC. In addition, the ground case was registered as T-3 Korattur Police Station Cr.No.779 of 2006. Such ground case was on account of an incident dated 2.6.2006, which was initially registered under Sections 147, 148, 336, 324 and 307 IPC., but subsequently converted to under Sections 147, 148, 336, 324, 307 and 302 IPC as the victim had died. From the grounds of detention it is also apparent that the detenu surrendered before the Judicial Magistrate, Ambattur on 5.6.2006 and continued in custody and remand was being extended periodically. In the grounds of detention, the detaining authority has further observed:-

> "4. I am also aware that Thiru Ramesh @ Vellai Ramesh, is in remand in T.3 Korattur Police Station Crime No.779/2006 and he has moved a bail application before the District Principal and Sessions Court, Chengalpattu in Crl.MP.No.8369/2006 and the same was dismissed. I am also aware that there is a real possibility of his coming out on bail by filing another application before the same Court or Higher Courts since in similar cases bails are granted by the same Court or Higher Court. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order."

3. One of the main contentions raised by the counsel for the petitioner is that at the time when the order of detention was passed, the detenu was in custody and there was no imminent possibility of the detenu being released on bail and therefore there was no necessity for passing an order of preventive detention, but the detaining authority mechanically came to the

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conclusion that there was real possibility of the detenu coming out on bail without any material on the basis of mere ipse dixit of the detaining authority and therefore such order of detention is liable to be quashed. In support of such contention, learned counsel for the petitioner has placed reliance upon several decisions of this Court as well as the Supreme Court.

4. Learned counsel appearing for the State has combated the aforesaid contention and has submitted that on the date when the order of detention was passed, the detenu was already in custody for more than 70 days and therefore there was an imminent possibility of the detenu being released on bail by filing another bail application. Therefore, it cannot be said that the conclusion of the detaining authority is not based on cogent material and such subjective satisfaction of the detaining authority is not liable to be interfered with in a petition under Article 226 of the Constitution of India.

5. In the decision reported in 2005(4) CTC 497 (K. THIRUPATHI v. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, TIRUCHIRAPALLI DISTRICT AT TIRUCHIRAPALI AND ANOTHER), a Full Bench of this Court, after referring to several decisions of the Supreme Court, ultimately observed :-

> "24. The detaining authority is required to follow strictly and scrupulously the forms and rules of law prescribed in that behalf or by the statutory provision under which the order of detention is being made after arriving at a subjective satisfaction. In the event of any deviation or violation of the statutory provisions or infraction of constitutional guarantees, the Courts will not hesitate to quash the orders of detention. Whatever be the jurisdiction to detain and the slightest infraction of the constitutional guarantee would lead to the detenu being set at liberty.
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> 25. It is by now well settled that in all detention laws, the orders of detention and its continuance of detention should be in conformity with Article 22 of the Constitution of India and slightest infraction of the Constitutional protection enshrined therein would be a valid ground to set the detenu at liberty.
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> 26. There must be cogent material before the Authority passing the detention order for inferring that the detenu was likely to be released on bail. This inference must be drawn from material on record and must not be the ipse dixit of the Authority passing the detention order.
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> 27. In the case of a person in custody a detention order can validly be passed if the authority passing the order is aware of the fact that he is actually in

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custody; if he has reason to believe on the basis of reliable material placed before him -

(a) that there is a real possibility of his being released on bail, and

(b) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording its satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher Court."

6. Learned counsel for the petitioner has also placed strong reliance upon a decision of the Supreme Court reported in (2006)1 M.L.J.(Crl.) 539 (T.V. SARAVANAN alias S.A.R. PRASANNA VENKATACHARIAR CHATURVEDI v. STATE, THROUGH SECRETARY AND ANOTHER). The said decision was rendered in an appeal filed against the judgment of this Court in HCP.No.34 of 2005, where the Habeas Corpus Petition challenging the order of detention had been rejected. In the appeal before the Supreme Court Senior Counsel for the appellant had advanced a contention that,

". . . there was no imminent chance of his being released on bail and yet the detaining authority, even in the absence of any material to raise an apprehension that he may be released on bail in near future and continue with his nefarious activities, passed the impugned order of detention."

While dealing with such contention, the Supreme Court extracted the relevant recitals in the grounds of detention to the effect :-

"I am aware that Thiru Venkata Saravanan alias S.A.R. Prasanna Venkatachariyar Chaturvedi is in remand in Central Crime Branch, Crime Nos.582 of 2004, 592 of 2004, 594 of 2004, 598 of 2004, 601 of 2004 and 602 of 2004 and a bail application was moved before the Principal Sessions Court in Crl.M.P.No.11163 of 2004 in Central Crime Branch, Crime No.582 of 2004 and the same was dismissed on 17.11.2004. Further a bail application was moved before the Hon'ble High Court, Madras in Crl.O.P.No.37011 of 2004 in Central Crime Branch, Crime No.582 of 2004 and the same was withdrawn on 3.12.2004. He has not moved any bail subsequently. However, there is imminent possibility of his coming out on bail by filing another bail application before the Principal Sessions Court or the Hon'ble High Court since in similar cases bails are granted by the Principal Sessions Court after a lapse of time. If he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public order."

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Thereafter the Supreme Court referring to several earlier decisions, most of which were also referred to in the Full Bench decision already cited, concluded as follows:-

> "11. It is not necessary for us to notice all the decisions cited before us because we find that the principle enunciated by this Court in Rameshwar Shaw v. District Magistrate, Burdwan, (1964) 4 S.C.R. 921 = A.I.R. 1964 S.C.334: (1964) 1 Crl.L.J. 257; Binod Singh v. District Magistrate, Dhanabad, (1986)4 S.C.C. 416:1986 S.C.C. (Crl.)490; Kamarunnissa v. Union of India, (1991)1 S.C.C.128: 1991 S.C.C.(Crl.)88, have been applied to the facts and circumstances of the cases cited before us by Shri. Tulsi. The principle is well settled and all that has to be seen is whether in the facts and circumstances of this case the tests laid down by this Court are satisfied.
>
> 12. The order of detention itself notices the fact that the appellant had moved an application for grant of bail before the Principal Sessions Court which was rejected on 17.11.2004. The appellant had moved another bail application before the High Court which was withdrawn on 3.12.2004. The detaining authority noticed that the appellant had not moved any bail application subsequently but it went on to state that there was imminent possibility of the appellant coming out on bail by filing another bail application before the Sessions Court or the High Court since in similar cases bails are granted by the Sessions Court after a lapse of time. The order of detention was passed on 15.12.2004 i.e. merely 12 days after the dismissal of the bail application by the High Court. There is nothing on record to show that the appellant had made any preparation for filing a bail application, or that another bail application had actually been filed by him which was likely to come up for hearing in due course.
>
> 13. A somewhat similar reasoning was adopted by the detaining authority in Rajesh Gulati v. Government of NCT of Delhi, (2002)7 S.C.C. 129 : 2002 S.C.C (Crl.) 1627. This Court noticing the facts of the case observed:
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> > "13. In this case, the detaining authority's satisfaction consisted of two parts - one: that the appellant was likely to be released on bail and two: that after he was so released the appellant would indulge in smuggling activities. The detaining authority noted that the appellant

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was in custody when the order of detention was passed. But the detaining authority said that 'bail is normally granted in such cases'. When in fact the five applications filed by the appellant for bail had been rejected by the Courts (indicating that this was not a 'normal' case), on what material did the detaining authority conclude that there was 'imminent possibility' that the appellant would come out on bail? The fact that the appellant was subsequently released on bail by the High Court could not have been foretold. As matters in fact stood when the order of detention was passed, the 'normal' rule of release on bail had not been followed by the Courts and it could not have been relied on by the detaining authority to be satisfied that the appellant would be released on bail. (See Ramesh Yadhav v. District Magistrate, Etah, (1985) 4 S.C.C.232 : 1985 S.C.C. (Crl.) 514)."

14. We are satisfied that for the same reason the order of detention cannot be upheld in this case. The bail applications moved by the appellant had been rejected by the Courts and there was no material whatsoever to apprehend that he was likely to move a bail application or that there was imminent possibility of the prayer for bail being granted. The "imminent possibility" of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention. There was, therefore, no sufficient compliance with the requirements as laid down by this Court."

7. Learned counsel for the petitioner has also invited our attention to the decision of the Supreme Court reported in (2006) 9 SCC 711 (A. SHANTHI (SMT) v. GOVERNMENT OF TAMIL NADU AND OTHERS), which was again a decision rendered in an appeal against dismissal of Habeas Corpus Petition by the Madras High Court. In the said case, it was observed:-

"3. One of the grounds urged in this appeal is that the detaining authority apprehending the imminent possibility of release of the detenu considered it necessary to detain him under the provisions of the Tamil Nadu Prevention of Dangerous Activities of

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Bootleggers and Slum Grabbers Act, 1982 (Act 14 of 1982). It is not disputed before us that the bail petitions filed on behalf of the detenu in those cases had been rejected and in fact no bail application was pending on the date on which the detention order was passed. However, the detaining authority in the grounds of detention stated that, "I am aware that Mr. Athikesavan is in remand in Central Crime Branch 'X' Crime Nos.315 of 2005 and 328 of 2005 and has moved a bail application before the 3rd Metropolitan Magistrate Court, George Town, Chennai, in Crl.MP.No.140 of 2005 and the same was dismissed. I am also aware that there is imminent possibility of his coming out on bail by filing another bail application for the above cases before the Principal Sessions Court or the Hon'ble High Court since in similar cases bail orders are granted by the Sessions Court or the High Court after a lapse for time."

4. In similar circumstances, this Court in T.V. Saravanan v. State directed release of the detenu. Counsel for the State is unable to distinguish that judgment. This Court in T.V. Saravanan has held the "imminent possibility" of the appellant coming out on bail is merely the ipse dixit of the detaining authority unsupported by any material whatsoever. There was no cogent material before the detaining authority on the basis of which the detaining authority could be satisfied that the detenu was likely to be released on bail. The inference has to be drawn from the available material on record. In the absence of such material on record the mere ipse dixit of the detaining authority is not sufficient to sustain the order of detention."

8. On a perusal of the decisions of the Supreme Court and the Full Bench decision of this Court, it is apparent that where the detenu is already in custody the order of detention can be passed, if there is imminent possibility of the detenu being released on bail. However, while coming to such a conclusion, the mere bald statement or the ipse dixit of the detaining authority would not be sufficient and such conclusion should be passed on cogent material. It is of course true as observed by the Full Bench that it is not possible to lay down in general terms as to what materials would be sufficient to come to such a conclusion and the validity of the order would depend upon facts and circumstances available in each case.

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9. Keeping in view the ratio of the aforesaid decisions and more particularly the opinion expressed by the Full Bench as well as the decision of the Supreme Court in (2006) 1 SCC (Cri) 593 (cited supra) notwithstanding the seriousness of the allegations against the detenu, particularly relating to the ground case, we are constrained to come to the conclusion that the observation of the detaining authority "that there is a real possibility of his coming out on bail by filing another application before the same Court or Higher Courts since in similar cases bails are granted by the same Court or Higher Court" is mere ipse dixit of the detaining authority without any cogent material. The offences allegedly committed by the detenu and the background in which such offences were allegedly committed clearly indicate that the offences are not of a routine nature wherein one can assume that bail would be granted almost as a matter of course either by the Sessions Judge or by the High Court.

10. From the materials on record, it is apparent that at the time when such detention order was passed, the investigation was still in progress and therefore the normal assumption, which is usually made that an accused may be released on bail on completion of the investigation, was also not available to be made.

11. Similarly the possibility of an accused being released on bail by invoking the provisions contained in Section 167(2)(proviso) of the Code of Criminal Procedure could not have been countenanced at that stage as such benefit is available only when chargesheet is not filed within the stipulated period of 60 days or 90 days, as the case may be and not otherwise. In the present case, the offence being punishable by death or life imprisonment, such statutory bail contemplated under Section 167 (2)proviso could be availed only after 90 days. Such deadline was also not round the corner impelling the authority to conclude that possibility of getting statutory bail loomed large. Even after rejection of the first bail application, a fresh bail application had not been filed. In the above background, thus, in the absence of any material, the conclusion of the detaining authority that there was a real possibility of the detenu coming out on bail by filing another bail application was not based on any cogent material and was rather the mere ipse dixit of the detaining authority.

12. In such view of the matter, the order of detention is liable to be quashed notwithstanding the seriousness of the allegations against the detenu. Accordingly, the impugned order is set aside and the detenu is directed to be set at liberty

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forthwith, unless his presence is required in connection with any other case.
dpk

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Commissioner of Police,
   Greater Chennai,
   Egmore, Chennai 8.

2. The Secretary to Government of Tamil Nadu,
   Prohibition & Excise Department,
   Fort St. George,
   Chennai 600 009.

3. The Public Prosecutor,
   High Court, Madras.

4. The Superintendent, Central Prison, Vellore

5. The Joint Secretary to Government
Public (Law Order) Fort Saint George,
Chennai 9

tej(co)
nm(04.07.07)

ORDER IN HCP.NO.1303/2006

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